

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZACKARY ELLIS SANDERS,

Defendant.

Case No. 1:20-cr-00143

Honorable T.S. Ellis, III

Trial: October 19, 2021

**MEMORANDUM IN SUPPORT OF
MOTION TO SEAL DEFENDANT'S MEMORANDUM**

I. INTRODUCTION

Zackary Ellis Sanders, by counsel, moves this Honorable Court, pursuant to Local Crim. R. 49, for entry of an Order permitting the entirety of his Memorandum in Support of his Motion for Leave to File Response, Request for Appointment of Independent Expert to Conduct Independent Evaluation and Determine Whether Dr. Montalbano's Methodology Comports with Accepted Psychological Practice, and for Oral Argument to be filed under seal. Sealing is necessary because it entirely discusses confidential medical information.

II. ARGUMENT

The entire memorandum should be sealed because it contains confidential medical information that the public would not, under any other circumstances, be entitled to see. It is true that judicial proceedings are generally open to the public and that there exists, while not a First Amendment right, a common law right of public access to judicial records and documents. *Media Gen. Operations, Inc. v. Buchanan*, 417 F.3d 424, 429 (4th Cir. 2005) (citing *Balt. Sun Co. v. Goetz*, 886 F.2d 60, 64-65 (4th Cir. 1989)). The presumption of the right of access can be rebutted

if countervailing interests heavily outweigh the public interests in access. *Virginia Dep't of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004). The party seeking to overcome the presumption bears the burden of showing some significant interest that outweighs the presumption. *Id.* at 575. Ultimately the decision to seal is a matter best left to the sound discretion of the district court. *Washington Post*, 386 F.3d at 575. With respect to medical records in particular, the Eastern District of Virginia has previously held that such records are entitled to privacy protection and may be filed under seal. *James v. Service Source, Inc.*, 2007 U.S. Dist. LEXIS 86169 at *12 (Nov. 21, 2007 E.D. Va.).

Counsel will provide the government and this Court separate unredacted versions of Defendant's pleading.

III. CONCLUSION

Defendant respectfully requests that the Court enter an Order providing that the entirety of Defendant's Memorandum in Support of his Motion for Leave to File Response, Request for Appointment of Independent Expert to Conduct Independent Evaluation and Determine Whether Dr. Montalbano's Methodology Comports with Accepted Psychological Practice, and for Oral Argument shall be permanently filed under seal.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2021, the foregoing was served electronically on the counsel of record through the U.S. District Court for the Eastern District of Virginia Electronic Document Filing System (ECF) and the document is available on the ECF system.

/s/ Jonathan Jeffress
Jonathan Jeffress